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8 Attorneys for Plaintiff
Facebook, Inc.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 FACEBOOK, INC. AND SUBSIDIARIES,

14 Plaintiff,

15 v.

16 INTERNAL REVENUE SERVICE,

17 Defendant.
18
19

Case No.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

FREEDOM OF INFORMATION ACT
ACTION

20 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

21 1. Facebook, Inc. ("Facebook") brings this action against the Internal Revenue Service
22 (the "IRS"), to compel compliance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552,
23 as amended.

24 **JURISDICTION AND VENUE**

25 2. This Court has jurisdiction over this case pursuant to 5 U.S.C. § 552(a)(4)(B) and
26 28 U.S.C. § 1331.

27 3. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).
28

1 **THE PARTIES**

2 4. Facebook is a Delaware corporation with its principal place of business located in
3 Menlo Park, California.

4 5. The IRS is an agency of the United States government within the meaning of
5 5 U.S.C. § 552(f)(1), headquartered in Washington, D.C., that has possession and control over the
6 records that Facebook seeks under the FOIA.

7 **STATUTORY FRAMEWORK**

8 6. The FOIA requires federal government agencies to release requested agency records
9 to the public unless one or more specific statutory exemptions apply. 5 U.S.C. § 552(a)(3)(A).

10 7. Records are agency records subject to the FOIA if the agency created or obtained
11 them and the agency controlled them at the time the FOIA request is made. *U.S. Dep't of Justice v.*
12 *Tax Analysts*, 492 U.S. 136, 144-45 (1989).

13 8. An agency has 20 business days after receipt of a FOIA request in which to
14 determine whether to comply with the request. The agency must then immediately notify the
15 requester of its determination, the reasons for such determination, and the right of the requester to
16 appeal an adverse determination to the agency's head. 5 U.S.C. § 552(a)(6)(A)(i).

17 9. If the agency fails to respond within 20 days, the requester "shall be deemed to have
18 exhausted his administrative remedies." 5 U.S.C. § 552(a)(6)(C)(i).

19 10. This Court has jurisdiction upon receipt of a complaint to review, de novo, the
20 agency's failure to respond and order the production of any agency records improperly withheld
21 from the requester. 5 U.S.C. § 552(a)(4)(B).

22 **STATEMENT OF FACTS**

23 11. In November 2011, the IRS initiated an audit of Facebook's tax years ended
24 December 31, 2008 ("Tax Year 2008"), and December 31, 2009 ("Tax Year 2009"). In January
25 2013, the IRS expanded its audit to include Facebook's tax year ended December 31, 2010 ("Tax
26 Year 2010").

27 12. On July 26, 2016, the IRS issued a Statutory Notice of Deficiency alleging that the
28 intangible property transferred from Facebook to Facebook Ireland Holdings Limited as of

1 September 15, 2010 had a net present value of \$13,883,630,000, thereby increasing Facebook's
 2 income in 2010 by \$84,915,248. In making such allegations and increasing Facebook's income by
 3 more than \$84 million, the IRS did not provide any economic analysis or otherwise explain its
 4 position.

5 13. Facebook seeks the production of documents and records improperly withheld by
 6 the IRS in response to two FOIA requests properly made by Facebook on August 5, 2016 regarding
 7 the IRS examination of Facebook for its Tax Years 2008, 2009, and 2010.

8 **First FOIA Request**

9 14. On August 5, 2016, Facebook's counsel prepared and transmitted Facebook's first
 10 FOIA request (the "National Office Request," Exhibit ("Ex.") A to the Declaration of Jay Cha-
 11 young Kim, dated October 11, 2016 ("Kim Decl.")), which relates to the IRS examination of
 12 Facebook for its Tax Years 2008, 2009, and 2010.

13 15. The National Office Request seeks documents contained in the administrative, legal,
 14 or other files of the IRS National Office or Area Counsel relating to any request for field service
 15 advice, technical assistance, or other advice in connection with the IRS examination of Facebook
 16 for its Tax Years 2008, 2009, and 2010, whether maintained in electronic or hardcopy format.

17 16. In the National Office Request, Facebook specifically requested all documents,
 18 including emails, involving members of the IRS National Office, Area Counsel, or any other IRS
 19 employees or contractors, regarding, referring, or relating to the IRS examination of Facebook for
 20 its Tax Years 2008, 2009, and 2010, whether maintained in electronic or hardcopy format.

21 17. The deadline for responding to the National Office Request was September 8, 2016.
 22 The IRS did not respond by the deadline.

23 18. On September 13, 2016, Facebook's counsel received a letter from the IRS, dated
 24 September 7, 2016, regarding the National Office Request (the "September 7, 2016 letter," Kim
 25 Decl., Ex. C). The letter stated that the IRS was unable to send the requested information by
 26 September 8, 2016, the 20 business-day period allowed by law. The letter further stated that The
 27 IRS extended the statutory response date to September 22, 2016, but that the IRS would still be
 28 unable to locate and consider release of the requested records by September 22, 2016. The letter

1 stated that Facebook could file suit after September 22, 2016.

2 19. On October 4, 2016, Facebook's counsel received a second letter from the IRS
3 referring to the National Office Request, dated September 23, 2016, requesting payment of \$19,598
4 to process the National Office Request and Facebook's second FOIA request (the "September 23,
5 2016 letter," Kim Decl., Ex. D). A check for \$19,598 was mailed to the IRS on October 5, 2016
6 (Kim Decl., Ex. D).

7 20. As of the date of this Complaint, the IRS has not disclosed any of the documents
8 and records requested by Facebook's National Office Request.

9 21. The statutory deadline for the IRS to respond to the National Office Request within
10 the 20 business-day statutory response period under the FOIA has expired.

11 22. Because the IRS failed to comply with the FOIA time limit provisions, Facebook
12 has exhausted its administrative remedies in accordance with 5 U.S.C. § 552(a)(6)(C)(i), with
13 regard to the National Office Request.

14 23. Facebook is entitled to reasonable attorney's fees and costs of maintaining this
15 action pursuant to 5 U.S.C. § 552(a)(4)(E).

16 **Second FOIA Request**

17 24. On August 5, 2016, Facebook's counsel prepared and transmitted Facebook's
18 second FOIA request (the "Examination Division Request," Kim Decl., Ex. B), which similarly
19 relates to the IRS examination of Facebook for its Tax Years 2008, 2009, and 2010.

20 25. The Examination Division Request seeks all documents contained in the
21 Examination Division's administrative files for Facebook for its Tax Years 2008, 2009, and 2010,
22 including but not limited to any of the following items described in the Internal Revenue Manual,
23 whether maintained in electronic or hardcopy format:

- 24 a. Forms 4318 Examination Workpapers (Field Examination) and Forms 4318-
25 A Continuation of Examination Workpapers;
- 26 b. Issue Lead Sheets and Sub-Issue Lead Sheets, supporting workpapers, index
27 systems, pro forma audits, and pro forma interviews;
- 28 c. Forms 9984 Examining Officer's Activity Record;

- d. Automated workpapers and reports;
- e. Forms 3198 Special Handling Notices;
- f. Forms 3210 Document Transmittals;
- g. Forms 5346 Examination Information Reports;
- h. Revenue Agent Reports (“RAR”)/Examination Reports;
- i. Forms 4665 Report Transmittals;
- j. Forms 3963 International Examiner’s Reports; and
- k. Special Agents’ Reports and Collateral Reports.

26. Facebook’s Examination Division Request also seeks all communications involving members of the IRS Examination Team for Facebook, or any other IRS employees or contractors, regarding, referring, or relating to the IRS examination of Facebook for its Tax Years 2008, 2009, and 2010; all documents constituting any Tax Litigation Division Legal Files, Tax Litigation Advice Files, Miscellaneous Law Files, Chief Counsel Office Files, or Regional Counsel Office Files for Facebook’s Tax Years 2008, 2009, and 2010; and all documents contained in the administrative files of the IRS National Office and Area Counsel relating to any request for field service advice, technical assistance, or other advice in connection with the IRS examination of Facebook for its Tax Years 2008, 2009, and 2010.

27. The deadline for responding to the Examination Division Request was September 8, 2016. The IRS did not respond by the deadline.

28. On September 13, 2016, Facebook’s counsel received a letter from the IRS, dated September 7, 2016, regarding the Examination Division Request (the “September 7, 2016 letter,” Kim Decl., Ex. C). The letter stated that the IRS was unable to send the requested information by September 8, 2016, the 20 business-day period allowed by law. The letter further stated that the IRS extended the statutory response date to September 22, 2016, but the IRS would still be unable to locate and consider release of the requested records by September 22, 2016. The letter stated that Facebook could file suit after September 22, 2016.

29. On October 4, 2016, Facebook’s counsel received a second letter from the IRS referring to the Examination Division Request (and the National Office Request), dated

1 September 23, 2016, requesting payment of \$19,598 to process the requests (the “September 23,
2 2016 letter,” Kim Decl., Ex. D). A check for \$19,598 was mailed to the IRS on October 5, 2016
3 (Kim Decl., Ex. D).

4 30. As of the date of this Complaint, the IRS has not disclosed any of the documents
5 and records requested by Facebook’s Examination Division Request.

6 31. The statutory deadline for the IRS to respond to the Examination Division Request
7 within the 20 business-day statutory response period under the FOIA has expired.

8 32. Because the IRS failed to comply with the FOIA time limit provisions, Facebook
9 has exhausted its administrative remedies in accordance with 5 U.S.C. § 552(a)(6)(C)(i) with
10 regard to the Examination Division Request.

11 33. Facebook is entitled to reasonable attorney’s fees and costs of maintaining this
12 action pursuant to 5 U.S.C. § 552(a)(4)(E).

13 **CAUSE OF ACTION**

14 34. Facebook incorporates by reference paragraphs 1 through 33 as if fully set forth
15 herein.

16 35. Facebook properly requested records within the IRS’s control and possession in
17 accordance with the FOIA.

18 36. Facebook is entitled under the FOIA to access the requested records.

19 37. The IRS failed to comply with statutory deadlines imposed by the FOIA.

20 38. The IRS wrongfully withheld the requested records in violation of the FOIA.

21 39. Facebook exhausted its administrative remedies with regard to the wrongfully
22 withheld records.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Facebook respectfully requests that this Court:

25 a. declare that the IRS failure to disclose the records requested by Facebook is unlawful;

26 b. enjoin the IRS from withholding and order the IRS to disclose the requested records to
27 Facebook, in accordance with 5 U.S.C. § 552(a)(4)(B);

- 1 c. award Facebook its costs and reasonable attorney fees, in accordance with 5 U.S.C.
2 § 552(a)(4)(E); and
3 d. grant such other and further relief as the Court deems just and proper.
4

5 Dated: October 11, 2016.

BAKER & MCKENZIE LLP

7
8 By: /s/ Scott Frewing
Scott H. Frewing

9
10 /s/ Drew Crousore
Andrew P. Crousore

11 Attorneys for Plaintiff
12 FACEBOOK, INC.
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